LEGAL TENDER ACT.

THE GREAT FINANCIAL QUESTION.

Decision of the United States Su-, preme Court.

All Outstanding Debts Contracted Before Tebruary 25, 1862, to be Paid in Coin.

The Legal Tender Act Justified as a Special Measure During War Times.

tongress Cannot Make Further Issues of Greenbacks Legal Tenders.

WASHINGTON, Feb. 7, 1870. The following opinion was golivered in the United States Supreme Court to-day by Chief Justice

Susan P. Hepburn and Henry A. Hepburn vs. Henry A. Griswold, in Error to the Court of Appeals of the State of Kentucky .- The question presented for our determination by the record in this case is whether or not the payee or assignee of a note made before the 25th of February, 1862, is obliged by law to accept in payment United States notes equal in nominal amount to the sum due, according to its terms, when tendered by the maker or other party bound to pay it, and this requires, in the first place, a construction of that clause of the first section of the act of Congress passed on that day of which was anthorized by the statute, to be a legal tender in payment of debts. The entire clause is in these words:- "And such notes berein enthorized shall be receivable in payment of all taxes, internal duties, excises, debts and demands of every kind due to the United States, except duties on imports and demands against the United States, of every kind whatsoever, except for interest upon the bonds and notes, which shall be paid in coin; and shall also be lawful money and a legal tender in payment of all gebts, public or private, within the United States except duties on imports and interest as aforesaid (Twelith United States Statutes, 345). This clause has already received much consideration here, and this court has held that upon a sound construction neither taxes imposed by State legislation (Lane county vs. Oregon, 7 Wallace, 71), nor demands upon contracts which stipulate in terms for the payment or delivery of coin or bullion (Bronson vs. Rodes, 7 Wallace, 229; Butler vs. Hartwitz, 7 Wallace, 258) are included by legislative intention under the description of debts, public and private. We are now to determine whether this description embraces debts contracted before as well as after the date of the act. It is an established rule for the construction of statutes that the terms employed by the Legislature are not to receive an interpretation which condicts with acknowledged principles of justice and coulty, if another sense, consonant with these principles, can be given to them. But this rule cannot prevail where the intent is clear, except in the scarcely supposable case where a statute sets at naught the plamest precepts of morality and social obligation. Courts must give effect to the clearly ascertained legislative interests, if not repugnant to the fundamental law ordained in the constitution.

Applying the rule just stated to the set under consideration there appears to be strong reason for construng the word "depts" as having reference only to debts contracted subsequent to the enactment of the law; for no one will question that the United States notes, which the act makes a legal tender in payment are, essentially unlike in nature, and being irredeemable in coin are necessarily unlike in value. The lawful money then in use and made a legal tender in payment consisted of gold and silver coin. The currency in use under the act and declared by its terms to be lawful money and a legal tender of notes or promises to pay impressed upon paper prepared in convenient form for circulation, and protected against counterfeiting by suitable devices and penalties. The former possess intrinsic value, determined by the weight and fineness of the metal; the latter have no intrinsic value, but a purchasing value, determined by the quantity in circulation, by general consent to its currency in payments, and by Both derive, in different degrees, a certain additional value from their adaptation to circulation by the form and impress given to them under nationa authority, and from the acts making them respec tively a legal tender. Contracts for the payment of money made before the act of 1862 had reference to coined money, and could not be discharged, unless by consent, otherwise than by the tender of the sum due in coin. Every such contract, therefore, was in legal import a contract for the payment of coin. There is a well known law of currency that notes or promises to pay, unless made conveniently or promptly convertible into coin at the will of the holder, can never, except under unusual or abnormal conditions, be at par in circulation with cois. It is an equally well known law that depreciation of notes must increase with the focrease of the quantity put in circulation and dimination of confidence ability or disposition to redeem. Their appreciation follows the reversal of these conditions. No act making them a legal tender can change materially the operations of these laws. Their force has been strikingly exemplified in the history of the United States notes. Beginning with a very slight depreciation when first issued in March, 1862, they sunk in July, 1864, to the rate of two dollars and eighty-five cents for a dollar in gold and then rose, until recently, when a dollar and twenty cents in paper became equal to a gold dollar. Admitting, then, that prior contracts are within the intention of the act, and assuming that the act is warranted by the constitution, it follows that the holder of a promissory note made before the act for a thousand dollars, payable, as we have just seen, according to the law and according to the intent of the parties, in coin, was required when depreciation reached its lowest point to accept in payment a thousand note dollars, although with the thousand coin dollars due under the contract he could have purchased on that day two thousand eight hundred and fifty such dollars. Every payment since the passage of the act of a note of earlier date has presented similar though less striking features.

Now, it certainly needs no argument to prove that an act compelling acceptance in satisfaction of any other than stipulated payment alters arbitrarily the terms of the contract and impairs its obligation and that the extent of impairment is in proportion to the inequality of the payment accepted under the constraint of the law to the payment due under the contract. Nor does it need argument to prove that the practical operation of such an act is contrary to justice and equality. It follows that no construction which attributes such practical operation to an act of Congress is to be favored, or, indeed, to be admitted, if any other can be reconciled with the manifest intent of the Legislature. What, then, is that manifest intent? Are we at liberty, upon a fair and reasonable construction of the act, to say that Congress meant that the word "debis," used in the net, should not include debts contracted prior to its passage? In the case of Bronson vs. Rodes we thought ourselves warranted in holding that this word, used in the statute, does not include obligations created by express contract for the payment of gold and silver, whether coined or in builton. This conclusion rested, however, mainly on the terms of the act, which not only allow but require payments in coin by or to the government, and may be fairly considered independently of considerations belonging to the law of contracts for the delivery of specified articles as sanctioning special private contracts for like payments, without which, indeed, the relating to government payments could hardly nave practical effect. This consideration, however, does not apply to the matter now

before us. There is nothing in the terms of the act which looks to any difference in its operations on different descriptions of debts payable generally in money—that is to say, in dollars and parts of a dollar. These terms, on the contrary, in their obvious import, include equally all debts not specially expressed to be payable in gold or silver, whether arising under past contracts and already due, or arising under such contracts and to become due at a future day, or arising and becoming due under sub-sequent contracts. A strict and literal construction, indeed, would, as suggested by Mr. Justice Story, in respect to the same word used in the constitution (1 Story on Constitution, 921), limit the word "debta" to debts existing; and if this construction cannot be accepted, because the limitations sanctioned by it cannot be reconciled with the obvious scope and purpose of the act, it is certainly conclusive against any interpretation which will exclude existing debts from its operation. The same conclusion results from the exception of interest on loans and duties on imports, from the effect of the legal tender clause. This exception affords an irresistible implication that no description of debts, whenever contracted, can be withdrawn from the effect of the act if not included within the terms on the reasonable intent of the exception. And it is worthy of observation in this connection that in all the debates to which the act gave occasion in Congress no suggestion was ever made that the legal tender clause did not apply as fully to contracts made before as to conracts made after its passage. These considerations seem to us concusive. We do not think ourselves at liberty, therefore, to say that Congress did not mitend to make the notes authorized by it a legal tender in payment of debts contracted before the passage of the act. We are thus brought to the question whether Congress has power to make notes used in more its authority a legal tender in payment of debts which, when contracted, were payable in gold and silver coin.

of debts which, when contracted, were payable in gold and silver coin.

The deficacy and importance of this question have not been overrated in the argument. This court always approaches the consideration of questions of this nature reluctantly, and its constant rule of decision has been and is that acts of Congress must be regarded as constitutional unless clearly shown to be otherwise. But the constitution is the fundamental law of the United States. By it the people have created a government, defined its powers, prescribed their limits, distributed them among the different departments and directed in general the manner of their exercise. No department of the government has any other powers than those delegated to it by the people. All the legislative power which but it has no legislative power which

granted by the constitution belongs to Congress, but it has no legislative power which is not thus granted; and the same observation is equally true in its application to the executive and judicial powers granted respectively to the President and the courts. All these powers differ in kind, but not in source or himitations; they all arise from the constitution and are limited by its terms. It is the function of the judiciary to interpret and apply the law between parties as they arise for judgment. It can only declare what the law is, and enforce by proper process the law thus declared. But in ascertaining the respective rights of parties it frequently becomes necessary to consult the constitution; for tacre can be no law inconsistent with the fundamental law. No enactment not in pursuance of the authority conferred by it can create obligations or confer rights, for such is the express declaration of the constitution itself in these words:—

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges of every State shall be bound thereby, anything in the constitution or laws of any State to the contrary nowithstanding.

State shall be bound thereby, anything in the constitution of iaws of any State to the contrary notwithstanding.

Not every act of Congress, then, is to be regarded as the supreme law of the land; nor is it by every act of Congress that the judges are bound. This enaracter and this force belong to such acts as are "made in pursuance of the constitution." When, therefore, a case arises for judicial determination and the decision depends on the alleged incomissioncy of a legislative provision with the fundamental law it is the plain duty of the Court to compare the act with the constitution, and if the former cannot, upon a fair construction, be reconciled with the latter, to give effect to the constitution rather than the statute. This seems so plain that it is impossible to maker it plainer by argument. If it be otherwise the constitution is not the supreme law. It is neither necessary nor useful in any case to inquire whether or not any set of Congress was passed in pursuance of it, and the oath which every member of this court is required to take, that he "will administer justice without respect to persons and do equal right to the poor and the rich, and althrilly perform the quites incumment upon him to the best of his ability and understending, agreeably to the constitution and laws of the United States," becomes an ide and unmeaning form.

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plaintiff in the court below sought to recover of the detendants a certain sum expressed on the face of a promissory note. The detendants insisted on the right, under the act of February 25, 1862, to acquit plaintif in the court below sought to rec right, under the act of February 25, 1862, to acquit themselves of their obligation by tendering in payment a sum nominally equal in United States notes; but the note had been executed before the passage of the act, and the planniff misited on his right, under the constitution, to be paid the amount one in gold and silver, and it has not been, and grannot be, denied that the planniff was entitled to judgment according to his ciaim, unless bound by a constitutional law to accept the notes as come. Thus two questions were directly presented:—were the delendants relieved by the act from the obligation assumed in the contract? Could the plaintiff be compelled by a judgment of the Court to receive in payment a currency of a different nature and value from that which was in the contempiation of the parties when the contract was made? The Cours of Appeals resolves both questions in the tegative, and the defendants seek the reversal of that Judgment by writ of error. It becomes our of that judgment by writ of error. It bed outy, therefore, to determine whether the act of February 25, 1862, so far as it makes United States notes a legal tender in payment of debts contracted prior to its passage, is constitutional and valid or

prior to its passage, is constitutional and valid or otherwise. Under a deep sease of our obligation to perform this duty to the best of our ability and understanding, we shall proceed to dispose of the case presented by the record.

We have aircany said, and it is generally if not universally conceded, that the government of the finited states is one of limited powers, and that no department possesses any authority not granted by the constitution. It is not necessary, however, in order to prove the existence of a particular authority, to show a particular and express grant. The design of the constitution was to establish a government competent to take direction and administration of the affairs of a great nation, and at the same time to mark by sufficiently definite lines the sphere of its operations. To this end it was needful only to make express grants of general powers, coupled with a further grant of such incidental and auxiliary powers as might be required for the exercise of the powers as might be required. These powers are necessarily extensive. It has been found, indeed, in the practical administration of the government that a very large part, if not the largest part, of its functions have been performed in the exercise of powers thus implied. But the extension of power by implication was regarded with some apprehension by the wise men who framed and by the intelligent citizens who adopted the constitution. This apprehension is manifest in the terms by which the grant of incidental and auxiliary power is made. All powers of this nature are included under the description of "power to make all taws necessary and proper for carrying into execution the powers expressly granted to Congress, or vested by the constitution in the government or in any of its departments or affairs." The same apprehension is equally apparent in the tenth article of the amendments, which declares that "the powers not delegated to the States or the people." We do not mean to expect to the existence of implied powers, while the wo

while the words "necessary and proper" were intended to have a sense, to use the words of Mr. Justice Story, "at once admonitory and directory, and to require that the means used in the execution, of an express power should be bona fide appropriate to the end." (I Story on constitution, 142, par. 1,253.) The second provision was intended to have a like admonitory and directory sense, and to restrain the limited government established under the constitution from the exercise of powers not clearly delegated or derived by just inference from powers so delegated.

It has not been maintained in argument, nor, indeed, would any one, however signify conversant with constitutional law, think of maintaining that there is in the constitution any express grant of legislative power to make any description of credit currency a legal tender in payment of debts. We must inquire, then, whether this can be done in the exercise of an implied power. The role for determining whether a legislative enacting teat be supported as an exercise of an implied power, was stated by Chief Justice Marshall, speaking for the whole court, in the case of McCulloch versus the Scate of Maryland (4 Wheaton 44); and the statement then made has ever since been accepted as a correct exposition of the constitution. His words were these:—"Let the end be legitimate, let it be within the scope of the constitution, his words were these:—"Let the end be legitimate, let it be within the scope of the constitution, his words were these:—"Let the end be legitimate, let it be within the protected operation of the constitution of the same opinion the practical operation of the constitution are planily adapted to that end, which are not prohibited, but consistent with the letter and spirit of the same opinion the practical operation of the constitution of the same opinion the practical operation of the constitution of the same opinion the practical operation of the constitution of the same opinion the practical operation of the constitution, or should Congress, un

It must be taken, then, as finally settled, so far as judicias decisions can settle anything, that the words "all laws necessary and proper for carrying into execution," powers expressly granted or vested, have in the constitution a sense equivalent to that of the words "laws not absolutely necessary, indeed, but appropriate and plainly adapted to constitutional

and is gitimate ends—laws not prohibited, but consistent with the letter and spirit of the constitution—laws really calculated to effect the objects entirusted to the government."

The question before us, then, resolves itself into this:—Is the clause which makes the United States notes a legal tender for debts contracted prior to its enactment a law of the description stated in the rule? It is not doubted that the power to establish a standard of value, by which all other values may be measured—or, in other words, to determine what shall be lawful money and a legal tender—is in its nature and of necessity a governmental power. It is in all countries exercised by the government. In the United States, so far as it relates to the precious metals, it is vested in Congress by the grant of the power to coin money. But can a power to impart these qualities to notes or promises to pay money when ordered in discharge of pre-existing debts be derived from the collage power or from any other power expressing given? It is certainly not the same power as the power to coin money, nor is it in any reasonable. Satisfactory sense an appropriate or plannly adopted means to the exercise of that power; nor is there more reason for saying that it is implied in or incidental to the power to regulate the any reasonable, satisfactory sense an appropriate or plainly adopted means to the exercise of that power; nor is these more reason for saying that it is implied in or incidental to the power to regulate the value of coined money of the United States or of foreign coms. This power of regulation is a power to determine the weight, purity, form and impression of the several coins, and their relation to each other, and the relations of foreign coms to the moneary unit of the United States. Nor is the power to make notes a legal tender the same as the power to make notes to be used as currency. The old Congress, under the Articles of Confederation, was clothed by express grant with the power to emit balls of creall, which are, in fact, notes for circulation as currency, and yet that Congress was not clothed with power to make their bills a legal tender on payment. And this court has recently held that Congress, under the constitution, possesses the same power to emit bills or notes as incidental to other powers, though not denominated among these expressly granted, but it was expressly declared at the same time that this decision continued nothing on the question of legal tender. Indeed, we are not aware that it has ever been claimed that the power to issue bills or notes has any identity with the power to make them a legal tender; on the contrary, the whole history of the country relates that notion. The States have always been held to possess the power to authorize and regulate the issue of bills for circulation by banks or individuals, subject, as has been lately determined, to the control of Congress, for the purpose of establishing and securing a national currency, and yet the States are expressly prohibited by the constitution from making anything but rold and sliver coin a legal tender. This seems decisive on the point that the power to tasse notes and the power to make them a legal tender are not the same power, and that they have to issue notes and the power to make them a legal tender are not the same power, and that they have no necessary connection with each other. But it has been maintained in argument that the power to make united States notes a legal tender in payment of all debts is a means appropriately and plainty adapted to the execution of the power to carry on war, of the power to regulate commerce and of the power to borrow money. If it is, and is not prohibited nor inconsistent with the letter or spirit of the constitution, then the act which makes them such legal tenders must be held to be constitutional.

Let us, then, first inquire whether it is an appropriate and plainly adapted means for carrying on war. The affirmative argument may be thus stated:—Congress has power to declare and provide for carrying on war. Congress has also power to emit bills of credit, or circulating notes, receivable for government dues, and payable, so far, at least, as parties are willing to receive them, in discharge of parties are willing to receive them, in discharge of government obligations. It will facilitate the use of such notes in disbursements to make them a legal tender in payment of existing debts; therefore Congress may make such notes a legal tender. It is difficult to say to what express power the authority to make notes a legal tender in payment of debts pre-existing in contracts may not be upheld as incidental upon the principles of this argument. Is there any power which does not involve the use of money? And is there any doubt that Congress may issue and use bills of credit as money in the execution of any power? The power to establish Post Offices and post roads, for example, involves the collection and disoursement of a large sum. Is not the power or make notes a legal tender as clearly unidental to of any power? The power to establish Post Offices and post roads, for example, involves the collection and discursement of a large sum. Is not the power to make notes a legal tender as clearly moidental to this power as to the war power? The answer to this question does not appear to us doubtful. The argument, therefore, seems to prove too much. It carries the doctrine of implied powers very far beyond any extent hitherto given it. It asserts that whatever in any degree promotes an end within the scope of a general power, whether in the correct sense of the word "appropriate" or not, may be done in the exercise of an implied power. Can this proposition be maintained? It is said that this is not a question for the court deciding a cause, but for the Congress exercising the power. But the decisive answer to this is that the admission of a legislative power to determine finally what powers have the described relation as means to the execution of other powers plainly granted, and then to exercise absolutely and without liability to question in cases involving private rights, the powers thus determined to have that relation would completely change the nature of American government, it would convert the government, which the people ordained as a government of limited powers, into a government of unimment of limited powers, into a government of un ited powers; it would obliterate every crite which this court, speaking through the venerated Chief Justice, in the case already cited, established for the determination of the question whether leg s lative acts are constitutional or unconstitutional

lative acts are constitutional or unconstitutional. Undoubtedly among means appropriate, plainly adapted, really calculated, the Legistature has unrestricted choice; but there can be no implied power to use means not within this description. Now, then, let it be considered what has actually been done in the provision of national currency, in July and August, 1861, and February, 1862, the issue of sixty millions in United States notes payable on demand was authorized. (2 U. S. Statutes, 259, 313, 338.) They were made receivable in payments, but were not declared a legal tender until March, 1862 (12 U. S. Statutes, 370), when the amount in circulation had been greatly reduced by receipt of cancellation. In 1862 and 1853 (2 U. S. Statutes, 345, 532, 709) the issue of four hundred and fifty millions in United States notes payable, not on demand, but in effect at the convenience of the government, was authorized, subject to certain restrictions. As to the fifty millions these notes were made receivable for the bonds of the national loans for all debis due to or from the United States exercity. bonds of the national loans for all debts due to or from the United States except duties on imports and interest on the public debt and were also declared a legal tender. In March, 1863; (12 U. S. Statutes, 71), the issue of notes for parts of a dollar was authorized to an amount not exceeding fifty millions of dollars. These notes were not declared a legal tender, but were made redeemable unier regulations to be prescribed by the Secretary of the Treasury. In February, 1863 (12 U. S. Statutes, 669), the issue of three hundred millions of dollars in notes of National Banking Associations was suthorized. These notes were made receivable to the same extent as United States notes, and provision was made to secure their redemption; but they were not made a legal tender. These several descriptions of notes have since constituted, under the various acts of Congress, the common currency of the United States. The notes which were not declared a legal tender have circulated with these which were United States. The notes which were not declared a legal tender have circulated with these which were so declared, without unravorable discrimination. It may be added as a part of the history that other issues bearing interest at various rates were authorized and made a legal tender, except in redemption of bank notes, for face amount, exclusive of interest. Such were the one and two years five per cent notes and the three years compound interest notes (13.

issues bearing interest at various rates were authorized and made a legal tender, except in redemption of bank notes, for face amount, exclusive of interest. Such were the one and two years five per cent notes and the three years compound interest notes (13, United States Statutes, 218, 245). These notes never entered largely or permanently into the circuitation, and there is no reason to think that their utility was increased or diminished by the act which declared them a legal tender for the face amount. They need not be further considered here. They serve only to illustrate the tendency, remarked by all who have investigated the subject of paper money, to increase the volume of irredeemable issues and to extend undefinitely the application of the quality of legal tenders. That it was carried no further during the present civil war, and has been carried no intrher since, is due to circumstances the consideration of which does not belong to this discussion.

We recur, then, to the question undor consideration, and not very many perhaps the general constitutionality, and not very many perhaps the general expediency, of the legislation by which a note curroncy has been authorized in recent years. The doubt is as to the power to declare a particular class of these notes to be as legal tender in payment of pre-existing debts. The orny ground upon which this point is asserted is not that the issue of notes was an appropriate and planity adapted means for carrying on the war, for that is admitted, but the making of them a legal tender to the extent mentioned was such a means. Now we have seen that of all the notes issued those not declared a legal tender and planity adapted means for carrying on the war, for that is admitted, but the making of them a legal tender to the extent mentioned was such a means not declared a legal tender motes; but this provision, if at all useful in this report, was of trilling importance compared with that which made them receivable for government data in the receivable for the redemptio

his creditors to receive them at par in payments. This is, as we have seen, by no means certain. If the quantity issued be excessive and redemption uncertain and remote, great depreciation will take place. If, on the other hand, the quantity is only adequate to the demands of business, and confidence in early redemption is strong, the notes will circulate freely whether made a legal tender or not; but if it be admitted that some increase of availability is derived from making these notes a legal tender under new contracts, it by no means follows that any appreciable advantage is gained by compelling creditors to rethese notes a legal tender under new contracts, it by no means follows that any appreciable advantage is gained by compelling creditors to receive them in satisfaction of pre-existing debts. And there is abundant evidence that whatever benefit is possible from that computation to some individuals, or to the government, is far more than ontweighed by the losses of property, the derangement of business, the fluctuations of currency and values, and the increase of prices to the people and the government, and the long train of evils which flow from the use of an irredeemable paper money. It is true that these evils are not to be attributed altogether to making it a legal tender; but this increases these evils. It certainly widens their extent and protracts their continuance. We are unable to persuate ourselves that are expedient of this sort is an appropriate and plainly adopted means for the execution of the power to declare and carry on war. If it adds nothing to the utility of the notes it cannot be upheld as a means to the end in furtherance of which the notes are issued; nor can it, in our judgment, be applied as such if, while factinating, in some degree, the circulation of the notes, it debases and injures the circulation of the notes, it debases and injures the circulation of the notes, it debases and injures the circulation of the ourrency in its proper use to a much greater degree. And these considerations seem to us equally applicable to the power to regulate commerce and to borrow money. Both powers necessarily involve the use of money by the people and by the government, but neither, as we thus, carries with it as an appropriate and plainly adapted means to its exercise the power of making circulating notes a legal tender in payment of pre-existing doots. But there is another view which seems to us decisive. To whatever express power the implied power in question may be referred in the rule stated by Chief Justice Marsuali, the words "appropriate by the limitation "really calculated," are qualified by

view which seems to us decisive. To whatever express power the implied power in question may be reserved in the rule stated by Chief Justice Marsiali, the words "appropriate," "plainly adapted," "really calculated," are qualified by the limitation that the means must be not prohibited by, but consistent with the letter and spirit of, the constitution. Nothing so prohibited or inconsistent can be regarded as appropriate, or plainly salapted, or really calculated means to any end.

Let us inquire, then, first, whether making bills of credit a legal-tender to the extent indicated is consistent with the spirit of the constitution. Among the great cardinal purposes of that instrument no one is more conspicuous or more venerable than the establishment of justice. And what was intended by the establishment of justice in the minds of the people who ordained it is happily not a matter of disputation. It is not left to inference or confecture, especially in its relations to contracts. When the constitution was undergoing discussion in the Convention, the Congress of the Confederation was engaged in the consideration of the ordinance for the government of the territory northwest of the other, the only territory subject at that time to its regulation and constrol. By this ordinance certain fundamental articles of compact were established between the original states and the people and States of the territory, for the purpose, to use its own language, "of extending the fundamental principles of civil and religious hoerty, whereon these republies—the States united under the Confederation)—their laws and constitutions are erected." Among these fundamental principles was this: "And in the just preservation of rights and property it is understood and declared that no law ought ever to be made or have force in the said territory that shall in any manner whatever interrere with or affect private contracts or engagements bond Medical Private contracts or engagements bond Medical Private contracts or engagements bond Medical Private list rue that this prohibition is not applied in terms to the government of the United States. Congress has express power to enact bankrapt laws, and we do not say that a law made in the execution of any other express power which incidentally only impairs the obligation of a contract can be need to be unconstitutional for that reason; but we think it clear that those who framed and those who adopted the constitution intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impairs the spirit of the constitution.

Another provision found in the fifth amendment must be considered in this connection. We refer to

must be considered in this connection. We refer to that which ordains "that private property shall not be taken for puolic use without compensation." This provision is kindred in spirit to that which be taken for public use without compensation."
This provision is kindred in spirit to that which forbias legislation impairing the obligation of contracts; but, unlike that, it is addressed directly and solely to the national government. It does not in terms prohibit legislation which appropriates the private property of one class of citizens to the use of another class; but if such property cannot be taken for the benefit of all without compensation it is difficult to understand how it can be so taken for the benefit of all without compensation it is difficult to understand how it can be so taken for the benefit of all without elements of the provision. But there is another provision in the same amendment which, in our judgment, cannot have its full and intended effect unless construed as a direct prohibition of the legislation which we have been considering. It is that which declares that no person shall be deprived of life, liberty or property without due process of law. It is not doubted that all the provisions of this amendment operate directly in limitation and restraint of the legislative powers conferred by the constitution. The only question is whether an act which compels all those who hold contracts for the payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept in payment of gold or sliver money to accept i payment of gold or silver money to accept in pay-ment a currency of inferior value deprives such perment a currency of inferior value deprives such persons of property without due process of law. It is quite clear that, whatever may be the operation of such an act, due process of law makes no part of it, boes it deprive any person of projerty? A very large proportion of the property of civilized men exists in the form of contracts. These contracts almost invariably stipulate for the payment of money, and we have already seen that contracts in the United States prior to the act under consideration for the payment of money were contracts to pay the sums specified in gold and silver con, and it is beyond donnt that the holders of these contracts tion for the payment of money were contracts to pay the sums specimed in goid and silver com, and it is beyond doubt that the holders of these contracts were and are as fully entitled to the protection of this constitutional provision as the holders of any other description of property. But it may be said that the holders of no description of property are protected by it from legislation which incidentally only impairs its value; and it may be urged in dinistration that the holders of stock in a turnpike, a bridge or a manufacturing corporation or an insurance company or a bank cannot, by authorizing similar works or corporations, reduce its price in the market; but all this does not appear to meet the real difficulty.

surance company or a bank cannot, by authorizing similar works or corporations, reduce its price in the market; but all this does not appear to meet the real difficulty.

In the cases mentioned the injury is purely contingent and incidental. In the cases we are now considering it is direct and inevitable. If in the cases mentioned the holder of the stock was required to convey it on demand to any one who should think fit to offer half its value for it the analogy would be more obvious. No one, probably, could be found to contend that an act enforcing the acceptance of fifty or seventy-five acres of land in satisfaction of a contract to convey a hundred would not come within the prohibition against arbitrary privation of property. We confess curreives unable to perceive any solid distinction between such an act and an act compelling all cluzens to accept in satisfaction of all contracts for money half or three-quarters or any other proportion less than the whole of the value actually due according to their terms. It is difficult to conceive what act would take private property without process of law if such act would not. We are obliged to conclude that an act making mere promises to pay dollars a legal tender in payment of debts previously contracted, is not a means "appropriate, planily adapted, really calculated" to carry into effect any express power vested in Congress—that such an act is inconsistent with the spirit of the constitution. It is not surprising that amid the tumuit of the late civil war and under the influence of apprehensions for the safety of the republic, almost universal, different views, never before entertained by American statesmen or jurists, were adopted by Kany. The time was not favorable to considerate redection upon the constitutional limits of legislation or executive authority. If power was assumed from patriotic motives the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent; some who were strongly av

Dissenting Opinion. Susan P. Hepburn and Another, vs. Henry A Griswold.-Mr. Justice Miller dissenting.

The provisions of the constitution of the United States, which have direct reference to the function of legislation, may be divided into three primary classes:-First, those which confer legislative powers on Congress; second, those which prohibit the exercise of legislative powers by Congress; third. those which prohibit the States from exercising certain legislative powers. The powers conferred on Congress may be subdivided into the positive and the auxiliary, or, as they are more usually called, the express and implied power. As instances of the former class may be mentioned the power to borrow money, to raise and support armies and to coin money and regulate the value thereof. The implied or auxiliary powers of legislation are founded largely on that general provision which closes the enumeration of powers granted in express terms by the declaration that Congress shall also have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this consti-

tution in the government of the United States or in any department or officer thereof. The question this court is called upon to consider is which this court is called upon to consider is whether the authority to make the notes of the United States a lawful tender in payment of debts is to be found in Congress, under either of these classes of legislative power. As one of the elements of this question, and in order to negative any idea, that the exercise of such a power would be an invasion of the rights reserved to the States, it may be as well to say at the outset that this is among the subjects of legislation forbidden to the States by the constitution. Among the unequivocal utterances of that instrument on this subject of lawful tenders is that which declares that no State shall coin money, emit bills of credit or make anything but gold and silver a tender in payment of debts, thus removing the whole matter from the dominion of State legislation. No such prohibition is placed upon the power of Congress over this subject, though there are, as we have already said, matters expressly forbidden to Congress; but neither this of legal tender, nor the power to centibilis of credit, or to impair the obligation of Congress is among them, though it must be obvious that in proublining fins legal tender power to the States the attention of the convention must have been directed to the propriety of a limitation of the power of Congress. On the contrary, Congress is expressly authorized to coin money, and to punish the counterfetting of such coin and of the securities of the United States a lawful tender in payment of debts. While I am not able to see in them, standing alone, a sunicient warrant for the exercise of tais power, they are not without declated powers of the government; for they show that so far as the framers of the constitution did go in granting express power over the lawful money of the country f was consideration would not, if exercised by Congress, be an invasion of any right reserved to the builted States, but one which they are forbidden to employ and that it is not in terms either granted or cented to Congress, can it be sustained as a la whether the authority to make the notes of the United States a lawful tender in payment of

doctrine is, that when an act of Congress is bront to the test of this clause of the constitution is cessity must be absolute and its adaptation the conceded purpose unquestionable. by an instrument so general in its language. The doctrine is, that when an act of Congress is brought to the test of this clause of the constitution its necessity must be absolute and its adaptation to the conceded purpose unquestionable. Nowhere has this principle been met with more emphatic denial, or more satisfactory relutation than in this court. That emisent furist and statesman, whose official career of over thirty years as Chief Justice commenced very soon after this constitution was adopted, and whose decisions have done as much to fix its meaning as those of any man living or each, has given this particular clause the benefit of his fullest consideration. In the case of the United States vs. Fisher (2 Cranch, 368), decided in 1804, the point in issue was the priority claumed for the United States as a creditor of a bankrupt over all other creditors. It was argued mainly on the construction of the statutes; but the power of Congress to pass such a law was also denied. The Chief Justice said:—"It is claimed under the authority to make all laws winch shall be necessary and proper to carry into execution the powers vested by the constitution in the government or in any department thereofs." In construing this clause it would be incorrect and would produce endless difficulties it the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power when various systems might be adopted for that purpose. It might be said with respect to each that it was not necessary because the end might be attained by other means. Congress must possess the cloude of means, and must be empowered to use any means which are in fact conductive to the exercise of the power granted by the constitution. It was so-cordingly held that, under the authority to pay the debts of the United States, and to authorize it to issue notes for circulation. It was conceded that the right to authorize it to issue notes for circulation is made to the constitution, still less the rig

A thing may be necessary, very necessary, absolutely or muispensably necessary. This word, then, has others, is used in various senses, and in its construction the subject, the optext, the intention of the person using them are to be taken into view.

Let this to done in this case under consideration. The subject is the execution of those great powers on which the welfare of a nation essentially depends. It is a subject in the welfare of a nation essentially depends. It is not be done by confining the choice of means to such narrow limits as not to leave it in the power of Coagress to adopt any which might be appropriate and which were conduct to the end. This provision is made in a constitution intended to endure for ages to come, and consequently to be adapted to various crises of human affairs. To have prescribed the means by which the government should in all future time exercise its powers would have been to change entirely the character of the instrument and give the properties of a legal code. It would have been an unwise attempt to provide by immutable rules for exigencies which, if foreseen at all, must have been to denirely the character of the instrument and give the properties of a legal code. It would have been in denirely and which can be best provided for as they occur. To have declared that the best means shall be compared to the capacity to avail tisel of experience, to 'excrete its reason and to accommodate its legislature of the capacity to avail tisel of experience, to 'excrete its reason and to accommodate its legislature to compared these remarks of their Justice Marsnall because, though made half a century ago, their applicability to the direct which confers and to borrow money which could in no other manner be borrowed, and to pay the debt of millions due to its solders, which could by no other manner be borrowed, and to pay the debt of millions due to its solders, which could have been due to the solders, which could have been of the use of the power of making the security of the power

the Secretary of the Treasury, would not have made a circulation sumdont to answer army purchases and army payments, to say nothing of the conting business of the country. A general collapse of credit, of payments and of business seemed inevitable, in which faith in the ability of the government would have been destroyed, the rebellion would have triumphed, the States would have been left divided and the people impoverished. The national government would have perished and with it the constitution which we are called upon to construction which we are called upon to construction which we are impovertished. The national government would have perished and with it the constitution which we are called upon to construct which we are called upon to construct with such nice and critical accuracy. That the Legal Tender act prevented these disastrous results, and that the legal tender chause was necessary to prevent them. I entertain no doubt. It furnished instantly a means of paying the soldiers in the field and filled the coffers of the commissary and quartermaster. It furnished a medium for the payment of private as well as public debts at a time when gold was being rapidly withdrawn from creditation and the bank currency was becoming worthless; it furnished the means to the capitalist of buying the bonds of the government; it stimulated trade, revived the drooping energies of the country and restored confidence to the public mind. The results which followed the adoption of this measure are beyond dispute. No other adequate cause has ever been assigned for the revival of government credit, the renewed activity of trade and the facility with which the government borrowed in two or three years, at reasonable rates of interest, mainly from its own citizens, double the amount of money there was in the country, including coin, bank notes and the notes issued under the legal tender acts. It is now said, however, as the calm retrospect of those events, that Treasury hotes suitable for circulation, as money bearing on their face the pledge of the United States for their ultimate payment in coin, would, if not equally efficient, have answered the requirements of Treasury Aotes suitable for circulation, as money bearing on their face the pledge of the United States for their ultimate payment in coin, would, if not equally efficient, have answered the requirements of the occasion without being made a legal tender for debts. But what was needed was something more than the credit of the government. That had stretched to its utmost tension, and was clearly no longer sufficient in the simple form of borrowing money. Is there any reason to believe that the more change in the form of the security given would have revived this sinking credit? On the contrary, all experience shows that a currency not redeemable promptly in coin, but dependent on the credit of a promissor whose resources were rapidly diminishing, while his habitues are increasing, soon sinks to the dead level of worthless paper. As no man would have been compelled to take it in payment of debts, as it bore no interest, as its period of redemption would have been remote and uncertain, this must have been the inevitable fate of any extensive issue of such notes; but when by law they were made to discharge the functions of paying debts they bad a perpetual credit or value equal to the amount of air the debts, pashe or private, in the country. If they were never releemed (as they nover have been) they still paid debts at their par value, and for this purpose were then, and have always been, eagerly sought by the people. To say, then, that this equality of legal tender was not necessary to their usofulness, seems to me unsupported by any sound view of the situation; nor can any just inference of that proposition arise from a comparison of the legal tender notes with the bonds issued by the government about the same time. These bonds had a fixed period for their payment, and the Secretary of the Treasury declared that they were payable in gold. They bore interest which was payable semi-annually in gold by express terms on their face; and the customs duties, which ylaw could be paid in nothing but gold, were secretly pi

The legal tender clauses of the statutes under cor The legal tender clauses of the statutes under consideration were placed emphatically by those who enacted them upon their necessity to the further borrowing of money and maintaining the army and navy. It was done reluctantly and with besitation, and only after the necessity had been demonstrated and had become imperative. Our statesmen had been trained in schools which looked upon such legislation with something more than distrust. The debates of the two houses of Congress show that on this necessity alone could thus clause of the bill have been carried, and they also prove, as I think, very clearly the existence of that necessity. The history of that gloomy time is not to be readily forgotten by the lover of his country, and will forever remain the full, clear and ample vlindication of the exercise of this not to be readily forgotten by the lover of his country, and will forever remain the full, clear and ample vindication of the exercise of this power by Congress, as its results have demonstrated the sagacity of those who originated and carried through the measure. Certainly it seems to the best judgment that I can bring to bear upon the subject that this law was a necessity in the most stringent sense in which that word can be used. But, if we adopt the coastruction of Chief Justice Marshall and the full cours over which he presided—a construction which has never to this day been overruled or questioned in this court—how can we avoid this conclusion? Can it be said that this provision did not conduce towards the purpose of borrowing money, of paying debts, of raising armies, of suppressing insurrection; or that it was not useful and essential to that end? Can it be said that this was not among the choice means, if not the only means, which were left to Congress to carry on this war for bational existence? Let us compare, the present with other cases decided in this court. If we can say indirectly that to deciare, as in the case of the United States vs. Fisher, that the debt which a bankrupt owes the government shall have priority of payment over all other debts, is a necessary and proper law to enable the money. But it was argued that, as a measure necessary and pay out its revenues, the organization of a bank with this function was within the power of Congress. In speaking of the true meaning of the word 'necessary' in this clause of the constitution, he says:—

"Does it always impart an absolute physical necessity so strong that one thing to which another may be termed necessary cannot exist without it? We think it does not. If reference be had to its use in the common affairs of the world or in approved authors, we find that it frequently imparts no more than that one thing is convenient, or useful, or essential to another. To employ means necessary to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be unattainable." The word 'necessary' admits, he says, of all degrees of comparison. A thing may be necessary, very necessary, absolutely or means the pay that the constitutions is already in the confidence of the cinted States of declare, as in the case of the United States of debts, is a necessary and proper law to enable the government to pay its own debts, how can we say that the legal tender clause was not necessary and the legal has it ever been, that other means more clearly within the competency of Congress existed, nor that a bank of deposit might possibly have answered without a circulation. But because that was the most fitting useful and efficient mode of doing what Congress was authorized to do, it was held to be necessary by this Court. The necessify in that case is much less apparent to me than in the adoption of the Legal Tender clause. In the Veazil Bank vs. Fenno, decided at the present term, the court held, after full consideration, that it was the privilege of Congress to furnish to the country the currency to be used by it in the transaction of business, whether this was done by means of coin, of the notes of the United States, or of banks created by Congress, and that as a means of making this power of Congress effectual that body could make this currency exclusive by taxing out of existence any currency authorized by the State, it was said that having, in the exercise of undoubted constitutional power, undertaken to provide a currency of making this power of Congress, and that as a means of making this power of Congress effectual that body could make this currency exclusive by taxing out of existence any currency authorized by the State, it was said that having, in the exercise of undoubted constitutional power, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may constitutionally secure the benefit of it to the people by appropriate and effectual means of making the currency established by Congress unserd, acceptable, perfect? The taxing all other currency out of existence, or giving to that farmished by the government the quality of lawful tender for debts? The latter is a means directly conductive to the end to be obtained—ameans which attains the end more promptly and more perfectly than any other means can do. The former is a remove and uncertain means in its effect, and is liable to the serious objection that it interferes with State legislation. If Congress can, however, under its implied power, protect and foster this currency by such means as a destructive taxation on State bank circulation it seems strange indeed if it cannot adopt the more appropriate and the effective means of declaring these notes of its own issus, for the redemption of which its faith is pledgel, a lawful tender in payment of debts. But it is said that the law is in conflict with the spirit if not the letter of several provisions of the constitution. Undoubtedly it is a law impairing the colligation of contracts made before its passage, but while the constitution forbids the States to pass such laws, it does not forbid Congress. On the contrart, congress is expressly authorized to establish a unform system of bankruptcy, the essence of which its to discharge debtors from the obligation of their contracts. And in pursuance of this power Congress has three times passed, but while the constitution forbids the States to pass such state by the constitution and those at home simps and the constitution is too discharge to t